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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

- x
United States of America,

Plaintiff,

Civil Action No. 89-594-TUC-RMB

v.

Burr-Brown Corporation (now Texas Instruments Tucson Corporation),

Defendant.
- x

AND

- x
State of Arizona,

Plaintiff,

Civil Action No. 4:15-cv-00257-DCB

v.

Texas Instruments Tucson Corporation,

Defendant.
- x

FINAL CONSENT DECREE

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607.

B. Consistent with the National Contingency Plan, 40 C.F.R. Part 300 ("NCP"), the United States seeks to implement a remedial action to address releases and threatened releases of hazardous substances at the Tucson International Airport Area ("TIAA") Superfund Site ("Site").

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of Arizona (the "State") of negotiations with the potentially responsible party ("PRP") regarding the implementation of the remedial design and remedial action for the Project Area, as defined below, which is located within the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. The State has also filed a complaint against the Settling Defendant in this Court alleging that the Settling Defendant is liable to the State under Section 107 of CERCLA, 42 U.S.C. § 9607, and under supplemental State law the Water Quality Assurance Revolving Fund, A.R.S. § 49-281 et. seq.

E. This Consent Decree implements the April 20, 2012 Record of Decision Amendment ("2012 ROD Amendment") for Area B of the Site and supersedes a 1990 Consent Decree between the United States and Settling Defendant's corporate predecessor-in-interest, Burr-Brown Corporation ("1990 Consent Decree"). The 1990 Consent Decree implemented the

original Record of Decision that was signed by EPA on August 22, 1988 ("1988 ROD"). The Settling Defendant that has entered into this Consent Decree ("Settling Defendant") does not admit any liability to Plaintiffs arising out of the transactions or occurrences alleged in the complaints, nor does it acknowledge that the release or threatened release of hazardous substance(s) at or from the Project Area constitutes an imminent and substantial endangerment to the public health or welfare or the environment.

F. In 1982, EPA began investigating groundwater contamination at various geographic locations within the Site. For the purpose of investigating and remediating groundwater contamination, EPA divided the Site into two geographic areas: (1) TIAA Superfund Site Area A, which comprises the main groundwater contamination plume located to the west of the airport, and (2) TIAA Superfund Site Area B, which includes the West Plume B, Arizona Air National Guard, Texas Instruments ("Project Area"), and the former West-Cap project areas, located to the north and west of the airport.

G. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List ("NPL"), set forth at 40 C.F.R. Part 300, by publication in the Federal Register on September 8, 1983, 48 Fed. Reg. 40,658.

H. The 1988 ROD addresses groundwater contamination north of Los Reales Road in "Area A" and all of the contamination in "Area B." The original response action included the pumping and treating of contaminated groundwater and was successful in containing the groundwater and inhibiting the migration of contaminated groundwater to other areas. Between 1992 and 2009, the Settling Defendant operated the pump and treat system at the Project Area. However, the original response action was not effective in treating the source areas of contamination in a timely manner, by no fault of Settling Defendant.

I. EPA completed a Final Focused Feasibility ("FFS") Study in October 2011 which reevaluated remedial alternatives for Area B.

J. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the completion of the FFS and of the proposed plan for remedial action on October 18, 2011, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the EPA Region 9 Regional delegatee based the selection of the response action.

K. The decision by EPA on the remedial action to be implemented in the Project Area is embodied in the 2012 ROD Amendment, on which the State has given its concurrence. The 2012 ROD Amendment replaces EPA's selected remedy for the Area B portion of the Site with in-situ chemical oxidation using potassium permanganate injected in source areas of contamination. The 2012 ROD Amendment includes EPA's explanation for its remedy selection over other alternatives as well as a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA, 42 U.S.C. § 9617(b).

L. Based on the information presently available to EPA and the State, EPA and the State believe that the Work will be properly and promptly conducted by the Settling Defendant if conducted in accordance with the requirements of this Consent Decree and its appendices.

M. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the remedy set forth in the 2012 ROD Amendment and the Work to be performed by the Settling Defendant shall constitute a response action taken or ordered by the President for which judicial review shall be limited to the administrative record.

N. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Project Area and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1367, and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaints, the Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. The Settling Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and the State and upon the Settling Defendant and its successors, and assigns. Any change in ownership or corporate status of the Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the Settling Defendant's responsibilities under this Consent Decree.

3. The Settling Defendant shall provide a copy of this Consent Decree to each contractor hired to perform the Work required by this Consent Decree and to each person

representing the Settling Defendant with respect to the Project Area or the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. The Settling Defendant or its contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. The Settling Defendant shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work in accordance with the terms of this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Defendant within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or its appendices, the following definitions shall apply solely for purposes of this Consent Decree:

"1988 Record of Decision" or "1988 ROD" shall mean the EPA Record of Decision relating to the TIAA Site signed on August 22, 1988, by the Regional Administrator, EPA Region 9, and all attachments thereto.

"1990 Consent Decree" means the consent decree in this action between the United States and Settling Defendant's corporate predecessor-in-interest, Burr-Brown Corporation.

"2012 Record of Decision Amendment" or "2012 ROD Amendment" shall mean the EPA Record of Decision Amendment relating to Area B of the TIAA Site signed on April 20, 2012 by the Assistant Director or designee, Superfund Division, EPA Region 9, and all attachments thereto. The 2012 ROD Amendment is attached as Appendix A.

"ADEQ" shall mean the Arizona Department of Environmental Quality and any successor departments or agencies of the State.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

"Consent Decree" shall mean this Consent Decree and all appendices attached hereto (listed in Section XXVIII). In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.

"Day" or "day" shall mean a calendar day unless expressly stated to be a working day. The term "working day" shall mean a day other than a Saturday, Sunday, or federal or State of Arizona holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal or State of Arizona holiday, the period shall run until the close of business of the next working day.

"DOJ" shall mean the United States Department of Justice and its successor departments, agencies, or instrumentalities.

"Effective Date" shall mean the date upon which this Consent Decree is entered by the Court as recorded on the Court docket, or, if the Court instead issues an order approving the Consent Decree, the date such order is recorded on the Court docket.

"EPA" shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

"EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

"Interest" shall mean:

1) for payments to be made to the EPA, interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at http://www.epa.gov/ocfopage/finstatement/superfund/int_rate.htm.

2) for payments to be made to the State, interest at a rate specified for interest pursuant to A.R.S. § 49-113.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"Operation and Maintenance" or "O&M" shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to Section VI (Performance of the Work by Settling Defendant) and the SOW.

"Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

"Parties" shall mean the United States, the State of Arizona, and the Settling Defendant.

"Performance Standards" shall mean the cleanup levels and other measures of achievement of the remedial action objectives, set forth in the 2012 ROD Amendment and the SOW and any modified standards established pursuant to this Consent Decree.

"Plaintiffs" shall mean the United States and the State of Arizona.

"Project Area" shall mean the same area that was previously known as the "Burr-Brown Corporation Site" located in Tucson, Arizona and is generally identified as "Texas Instruments" in Figure 2 of the 2012 ROD and any other areas where a hazardous substance, hazardous waste, hazardous constituent, pollutant or contaminant from the Project Area has been deposited, stored, disposed of, or placed, or has migrated or otherwise come to be located. The "Burr-Brown Corporation Site" was described in the 1990 Consent Decree as follows:

> The Site is located in Township 15, South, Range 14, East, and Section 17 in Pima County, Arizona. The Site Encompasses property owned by Burr-Brown, property immediately contiguous to the Burr-Brown property and the area between the northern boundary of the plant site and Valencia Road. For Purposes of this Consent Decree , the [Burr-Brown Corporation Site] is defined as the areal extent of groundwater contamination that is the easternmost of the two plumes which EPA has designated as "Area "B" in its Feasibility Study of the Tucson International Airport Area Superfund Site (the "Superfund Site"") and in the [1988] Record of Decision. The Superfund Site was listed on the "Expanded Eligibility List," a preliminary National Priorities List

(NPL) on July 23, 1982. It was proposed for inclusion on the original NPL on December 30, 1982, and was included on the NPL on September 8, 1983.

"Response Costs" shall mean all costs, not previously paid by Settling Defendant, including, but not limited to, direct and indirect costs that the United States incurred or incurs in reviewing or developing plans, reports, and other deliverables submitted pursuant to this Consent Decree or the 1990 Consent Decree, in overseeing implementation of the Work, or in otherwise implementing, overseeing, or enforcing this Consent Decree or the 1990 Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs and the costs incurred pursuant to Paragraph 9 (Notice to Successors-in-Title and Transfers of Real Property), Sections VII (Remedy Review), IX (Access and Institutional Controls) (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure, implement, monitor, maintain, or enforce Institutional Controls including, but not limited to, the amount of just compensation), XV (Emergency Response), Paragraph 45 (Funding for Work Takeover), Section XIX (Dispute Resolution), Section XXIX (Community Involvement), and all litigation costs.

"RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

"Remedial Action" shall mean all activities Settling Defendant is required to perform under the Consent Decree to implement the 2012 ROD Amendment related to the Project Area, in accordance with the SOW, the final Remedial Design and Remedial Action Work Plans, and other plans approved by EPA, until the Performance Standards are met, and excluding performance of the Remedial Design, O&M, and the activities required under Section XXV (Retention of Records).

"Remedial Design" shall mean those activities to be undertaken by Settling Defendant to develop the final plans and specifications for the Remedial Action pursuant to the SOW.

"Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

"Settling Defendant" shall mean Texas Instruments Tucson Corporation.

"Site" shall mean the TIAA Site, in Tucson, Pima County, Arizona, and is depicted generally on the map attached as Appendix B.

"State" shall mean the State of Arizona.

"State Future Response Costs" shall mean the reasonable and necessary costs incurred by the State, including ADEQ, after the Effective Date, including the costs in reviewing and overseeing the Work including the costs associated with collecting and analyzing split samples, reviewing any deliverables submitted and consulting with EPA. Such costs shall include salaries and benefits paid to the state employees and other direct and indirect costs.

"Statement of Work" or "SOW" shall mean the statement of work for implementation of the Remedial Design, Remedial Action, and O&M at the Project Area, as set forth in Appendix C to this Consent Decree and any modifications made in accordance with this Consent Decree.

"Supervising Contractor" shall mean the principal contractor retained by Settling Defendant to supervise and direct the implementation of the Work under this Consent Decree.

"TIAA Burr Brown Special Account" shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

"Transfer" shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

"United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA, and any federal natural resource trustee.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous material" or "hazardous substance" under Arizona law.

"Work" shall mean all activities and obligations the Settling Defendant is required to perform under this Consent Decree, except the activities required under Section XXV (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties. The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment by the design and implementation of response actions at the Project Area by the Settling Defendant, to pay response costs of the Plaintiffs, and to resolve the claims of Plaintiffs against the Settling Defendant as provided in this Consent Decree. This Consent Decree replaces and supersedes the 1990 Consent Decree.

6. Commitments by the Settling Defendant. The Settling Defendant shall finance and perform the Work in accordance with this Consent Decree, the 2012 ROD Amendment, the

SOW, and all work plans and other plans, standards, specifications, and schedules set forth in this Consent Decree or developed by the Settling Defendant and approved by EPA pursuant to this Consent Decree. The Settling Defendant shall pay the United States for its Response Costs and shall pay the State for State Future Response Costs as provided in this Consent Decree.

7. Compliance with Applicable Law. All activities undertaken by the Settling Defendant pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. The Settling Defendant must also comply with all applicable or relevant and appropriate requirements of all federal and state environmental laws as set forth in the 2012 ROD Amendment and the SOW. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be deemed to be consistent with the NCP as provided in Section 300.700(c)(3)(ii) of the NCP.

8. Permits

a. As provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, the Settling Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. The Settling Defendant may seek relief under the provisions of Section XVIII (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval referenced in Paragraph 8.a. and

required for the Work, provided that it has submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

9. Notice to Successor-in-Title and Transfers of Real Property

a. As of the Effective Date of this Consent Decree, Settling Defendant represents that it does not, at present, own any property within the Project Area. For any real property owned or controlled by the Settling Defendant located at the Project Area after the Effective Date, the Settling Defendant shall, within fifteen (15) days after the closing date of the acquisition of the real property or control, submit to EPA for review and approval a proposed notice to be filed with the appropriate land records office that provides a description of the real property and provides notice to all successors in title that the real property is part of the Project Area, that EPA has selected a remedy for Area B of the Site, and that the potentially responsible party has entered into a Consent Decree requiring implementation of the remedy. The notice also shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. The Settling Defendant shall record the notice within ten (10) days after EPA's written approval of the notice. The Settling Defendant shall provide EPA with a certified copy of the recorded notice within ten (10) days after recording such notice.

b. The Settling Defendant shall, at least sixty (60) days prior to any Transfer of any real property located at the Project Area, give written notice: (1) to the transferee regarding the Consent Decree; and (2) to EPA and the State regarding the proposed Transfer,

including the name and address of the transferee and the date on which the transferee was notified of the Consent Decree.

c. Considering the transfer of real property located at the Project Area prior to the Effective Date, unless the United States otherwise consents in writing, the Settling Defendant shall continue to comply with its obligations under the Consent Decree, including, but not limited to, its obligation to provide and/or secure access.

VI. PERFORMANCE OF THE WORK BY THE SETTLING DEFENDANT

10. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by the Settling Defendant pursuant to Sections VI (Performance of the Work by The Settling Defendant), VII (Remedy Review), VIII (Quality Assurance, Sampling, and Data Analysis), IX (Access and Institutional Controls), and XV (Emergency Response) shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA after a reasonable opportunity for review and comment by the State. Within ten (10) days after the lodging of this Consent Decree, the Settling Defendant shall notify EPA and the State in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. With respect to any contractor proposed to be Supervising Contractor, the Settling Defendant shall demonstrate that the proposed contractor has a quality assurance system that complies with ANSI/ASQC E4-2004, "Quality Systems for Environmental Data and Technology Programs: Requirements with Guidance for Use" (American National Standard), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001, reissued May 2006) or equivalent documentation as determined by EPA.

EPA will issue a notice of disapproval or an authorization to proceed regarding hiring of the proposed contractor. If at any time thereafter, the Settling Defendant proposes to change a Supervising Contractor, the Settling Defendant shall give such notice to EPA and the State and must obtain a notice of authorization to proceed from EPA, after a reasonable opportunity for review and comment by the State, before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify the Settling Defendant in writing. The Settling Defendant shall submit to EPA and the State a list of contractors, including the qualifications of each contractor that would be acceptable to them within thirty (30) days after receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. The Settling Defendant may select any contractor from that list that is not disapproved and shall notify EPA and the State of the name of the contractor selected within twenty-one (21) days after EPA's notice of authorization to proceed.

c. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents the Settling Defendant from meeting one or more deadlines in a plan approved by EPA pursuant to this Consent Decree, the Settling Defendant may seek relief under Section XVIII (Force Majeure).

11. Performance of Work in Accordance with SOW. The Settling Defendant shall conduct all Work in accordance with the SOW, including: (a) develop the Remedial Design, as appropriate; (b) perform the Remedial Action; and (c) operate, maintain, and monitor the effectiveness of the Remedial Action; all in accordance with the SOW and all EPA-approved,

conditionally-approved, or modified deliverables as required by the SOW. All deliverables required to be submitted for approval under the CD or SOW shall be subject to approval by EPA.

12. Modification of SOW or Related Work Plans.

a. If EPA determines that it is necessary to modify the Work specified in the SOW and/or in work plans developed pursuant to the SOW to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the 2012 ROD Amendment, and such modification is consistent with the scope of the remedy set forth in the 2012 ROD Amendment, then EPA may issue such modification in writing and shall notify the Settling Defendant of such modification. For the purposes of this Paragraph and Paragraphs 47 (Completion of the Remedial Action) and 48 (Completion of the Work) only, the "scope of the remedy set forth in the 2012 ROD Amendment" for the Project Area is In-Situ Chemical Oxidation (ISCO) using potassium permanganate injected into the volatile organic compound (VOC) source and residual areas in the groundwater plume, groundwater monitoring (i.e., attenuation parameters outside of the treatment zones would be monitored to ensure the effectiveness of the remedy), and institutional controls to limit or prevent public access to areas where treatment of residual VOCs will be ongoing. This remedy is designed to meet the following Remedial Action Objectives: (1) reduce the risk of exposure to contaminants; (2) restore contaminated groundwater to support existing and future uses, i.e., drinking water; and (3) prevent or reduce migration of groundwater contamination above maximum contaminant levels. If the Settling Defendant objects to the modification it may, within thirty (30) days after EPA's notification, seek dispute resolution under Paragraph 66.b (Record Review).

b. The SOW and/or related work plans shall be modified: (1) in accordance with the modification issued by EPA; or (2) if the Settling Defendant invokes dispute resolution,

in accordance with the final resolution of the dispute. The modification shall be incorporated into and enforceable under this Consent Decree, and the Settling Defendant shall implement all Work required by such modification. The Settling Defendant shall incorporate the modification into the work plans required by the SOW, as appropriate.

c. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

13. Nothing in this Consent Decree, the SOW, or the work plans constitutes a warranty or representation of any kind by Plaintiff that compliance with the Work requirements set forth in the SOW and the work plans will achieve the Performance Standards.

14. Off-Site Shipment of Waste Material.

a. The Settling Defendant may ship hazardous substances, pollutants, and contaminants from the Site to an off-Site facility only if Settling Defendant complies with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Settling Defendant will be deemed to be in compliance with CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Settling Defendant obtains a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440. The Settling Defendant may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if it complies with EPA's "Guide to Management of Investigation Derived Waste," OSWER 9345.3-03FS (Jan. 1992).

b. The Settling Defendant may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, it provides written notice to the appropriate state environmental official in the receiving facility's state and to the EPA

Project Coordinator. This notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten (10) cubic yards. The written notice shall include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. The Settling Defendant also shall notify the state environmental official referenced above and the EPA Project Coordinator of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. The Settling Defendant shall provide the written notice after the award of the contract for Remedial Action construction and before the Waste Material is shipped.

VII. REMEDY REVIEW

15. Periodic Review. The Settling Defendant shall conduct any studies and investigations that EPA requests in order to permit EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment at least every five (5) years as required by Section 121(c) of CERCLA, 42 U.S.C. § 9621(c), and any applicable regulations.

16. EPA Selection of Further Response Actions. If EPA determines, at any time, that the Remedial Action is not protective of human health and the environment, EPA may select further response actions for the Site in accordance with the requirements of CERCLA and the NCP.

17. Opportunity to Comment. The Settling Defendant and, if required by Sections 113(k)(2) or 117 of CERCLA, 42 U.S.C. §§ 9613(k)(2) or 9617, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

18. The Settling Defendant's Obligation to Perform Further Response Actions. If EPA selects further response actions relating to the Project Area, EPA may require the Settling Defendant to perform such further response actions, but only to the extent that the reopener conditions in Paragraphs 82 or 83 (United States' Pre- or Post-Certification Reservations) are satisfied. The Settling Defendant may invoke the procedures set forth in Section XIX (Dispute Resolution) to dispute (a) EPA's determination that the reopener conditions of Paragraphs 82 or 83 are satisfied, (b) EPA's determination that the Remedial Action is not protective of human health and the environment, or (c) EPA's selection of the further response actions. Disputes pertaining to whether the Remedial Action is protective or to EPA's selection of further response actions shall be resolved pursuant to Paragraph 66.b (Record Review).

19. Submission of Plans. If the Settling Defendant is required to perform further response actions pursuant to Paragraph 16, it shall submit a plan for such response action to EPA for approval in accordance with the procedures of Section VI (Performance of the Work by The Settling Defendant). The Settling Defendant shall implement the approved plan in accordance with this Consent Decree.

VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

20. Quality Assurance.

a. The Settling Defendant shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance, and monitoring samples in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R5)" (EPA/240/B-01/003, March 2001, reissued May 2006), "Guidance for Quality Assurance Project Plans (QA/G-5)" (EPA/240/R-02/009, December 2002), and "Uniform Federal Policy for Quality Assurance Project Plans," Parts 1 3, EPA/505/B-04/900A though 900C (March 2005),

and subsequent amendments to such guidelines upon notification by EPA to the Settling Defendant of such amendment. Amended guidelines shall apply only to procedures conducted after such notification.

b. Prior to the commencement of any monitoring project under this Consent Decree, the Settling Defendant shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP, and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Consent Decree. The Settling Defendant shall ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by the Settling Defendant in implementing this Consent Decree, to the extent possible considering the rules, guidelines, and any contractual provisions relevant to the laboratory(ies) used. In addition, the Settling Defendant shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. The Settling Defendant shall ensure that the laboratories it utilizes for the analysis of samples taken pursuant to this Consent Decree perform all analyses according to accepted EPA methods that are documented in the "USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis, ILM05.4" (December 2006), and the "USEPA Contract Laboratory Program Statement of Work for Organic Analysis, SOM01.2 (amended April 2007)," "USEPA Contract Laboratory Program Statement of Work for Inorganic Superfund Methods (Multi-Media, Multi-Concentration)," ISM01.2 (Jan. 2010), or other methods acceptable to EPA, and is a laboratory that is certified by the State. The Settling Defendant shall ensure that all laboratories it uses for

analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent quality assurance/quality control ("QA/QC") program. The Settling Defendant shall use only laboratories that participate in an EPA-Accepted QA/QC program or other program acceptable to EPA. The Settling Defendant shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Consent Decree are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

21. Upon request, the Settling Defendant shall allow split or duplicate samples to be taken by EPA and the State or their authorized representatives. The Settling Defendant shall notify EPA and the State not less than thirty (30) days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA and the State shall have the right to take any additional samples that EPA or the State deems necessary. Upon request, EPA and the State shall provide to the Settling Defendant split and/or duplicate samples of any samples they take as part of Plaintiffs' oversight of the Settling Defendant's implementation of the Work.

22. The Settling Defendant shall submit to EPA and the State electronic copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of the Settling Defendant related to the Project Area and/or the implementation of this Consent Decree unless EPA agrees otherwise.

23. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

IX. ACCESS AND INSTITUTIONAL CONTROLS

24. If the Project Area is owned or controlled by the Settling Defendant:

a. the Settling Defendant shall, provide the United States, the State, and their representatives, contractors, and subcontractors, with access at all reasonable times to the Project Area, to conduct any activity regarding the Consent Decree including, but not limited to, the following activities:

i. Monitoring the Work;

ii. Verifying any data or information submitted to the United States or the State;

iii. Conducting investigations regarding contamination at or near the Project Area;

iv. Obtaining samples;

v. Assessing the need for, planning, or implementing additional response actions at or near the Project Area;

vi. Assessing implementation of quality assurance and quality control practices as defined in the approved CQAPP;

vii. Implementing the Work pursuant to the conditions set forth in Paragraph 86 (Work Takeover);

viii. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by the Settling Defendant or its agents, consistent with Section XXIV (Access to Information);

ix. Assessing the Settling Defendant's compliance with the Consent Decree;

x. Determining whether the Project Area or other real property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Consent Decree; and

xi. Implementing, monitoring, maintaining, reporting on, and enforcing any Institutional Controls.

b. The Settling Defendant shall not use the Project Area, or such other real property, in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material or interfere with or adversely affect the implementation, integrity, or protectiveness of the Remedial Action or O&M.

25. If the Project Area, or any portion of the Project Area is owned or controlled by persons other than the Settling Defendant, the Settling Defendant shall use best efforts to secure from such persons an agreement to provide access thereto for the United States, the State, and the Settling Defendant, and their representatives, contractors, and subcontractors, to conduct any activity regarding the Consent Decree including, but not limited to, the activities listed in Paragraph 24.

26. For purposes of Paragraph 25, "best efforts" includes the payment of reasonable sums of money to obtain access. If, within ninety (90) days after the Effective Date, the Settling Defendant has not obtained agreements to provide access as required by Paragraph 25, the Settling Defendant shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that the Settling Defendant has taken to attempt to comply

with Paragraph 25. The United States and the State may, as they deem appropriate, assist the Settling Defendant in obtaining access. The Settling Defendant shall reimburse the United States and the State under Section XVI (Payments for Response Costs) for all costs incurred, direct or indirect, by the United States and the State in obtaining such access, including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

27. If EPA determines that Institutional Controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls are needed at or in connection with the Project Area, the Settling Defendant shall cooperate with EPA's and the State's efforts to secure and ensure compliance with such governmental controls.

28. Notwithstanding any provision of the Consent Decree, the United States and the State retain all of their access authorities and rights, as well as all of their rights to require Institutional Controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

X. REPORTING REQUIREMENTS

29. The Settling Defendant shall submit to EPA and the State electronic copies of written monthly progress reports that meet the requirements of the SOW. The Settling Defendant shall submit these progress reports to EPA and the State by the tenth (10^{th}) day of every month following the lodging of this Consent Decree until EPA notifies the Settling Defendant pursuant to Paragraph 49.b of Section XIV (Certification of Completion). If requested by EPA or the State, the Settling Defendant shall also provide briefings for EPA and the State to discuss the progress of the Work. The Settling Defendant shall notify EPA of any change in the schedule described in the monthly progress report for the performance of any

activity, including, but not limited to, data collection and implementation of work plans, no later than seven (7) days prior to the performance of the activity.

30. Every six (6) months, commencing one (1) year after the notice of authorization to proceed under Paragraph 10 (Selection of Supervisory Contractor), Settling Defendant shall submit to EPA and the State electronic copies of a Semi-Annual Report that meets the requirements of the SOW.

31. Upon the occurrence of any event during performance of the Work that the Settling Defendant is required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act ("EPCRA"), 42 U.S.C. § 11004, the Settling Defendant shall immediately orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator nor the Alternate EPA Project Coordinator is available, the Emergency Response Section, Region 9, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

32. Within twenty (20) days after the onset of such an event, the Settling Defendant shall furnish to EPA and the State a written report, signed by the Settling Defendant's Project Coordinator, setting forth the events that occurred and the measures taken, and to be taken, in response thereto. Within thirty (30) days after the conclusion of such an event, the Settling Defendant shall submit a report setting forth all actions taken in response thereto.

33. The Settling Defendant shall submit electronic copies of all plans, reports, data, and other deliverables required by the SOW, or any other approved plans to EPA in accordance with the schedules set forth in such plans. The Settling Defendant shall simultaneously submit

electronic copies of all such plans, reports, data, and other deliverables to the State. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5" by 11", the Settling Defendant shall also provide EPA with paper copies of such exhibits.

34. All deliverables submitted by the Settling Defendant to EPA or the State that purport to document the Settling Defendant's compliance with the terms of this Consent Decree shall be signed by an authorized representative of the Settling Defendant.

XI. EPA APPROVAL OF PLANS, REPORTS, AND OTHER DELIVERABLES

35. Initial Submissions.

a. After review of any plan, report, or other deliverable that is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing.

b. EPA also may modify the initial submission to cure deficiencies in the submission if: (i) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (ii) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable plan, report, or deliverable.

36. Resubmissions. Upon receipt of a notice of disapproval under Paragraph 35.a(iii) or (iv), or if required by a notice of approval upon specified conditions under Paragraph 35.a(ii), the Settling Defendant shall, within thirty (30) days or such longer time as specified by EPA in

such notice, correct the deficiencies and resubmit the plan, report, or other deliverable for approval. After review of the resubmitted plan, report, or other deliverable, EPA may: (a) approve, in whole or in part, the resubmission; (b) approve the resubmission upon specified conditions; (c) modify the resubmission; (d) disapprove, in whole or in part, the resubmission, requiring the Settling Defendant to correct the deficiencies; or (e) any combination of the foregoing.

37. Material Defects. If an initially submitted or resubmitted plan, report, or other deliverable contains a material defect, and the plan, report, or other deliverable is disapproved or modified by EPA under 35.b(ii) or 36 (Resubmissions) due to such material defect, then the material defect shall constitute a lack of compliance for purposes of Paragraph 70. The provisions of Section XIX (Dispute Resolution) and Section XX (Stipulated Penalties) shall govern the accrual and payment of any stipulated penalties regarding the Settling Defendant's submissions under this Section.

38. Implementation. Upon approval, approval upon conditions, or modification by EPA under Paragraph 35 (Initial Submissions) or Paragraph 36 (Resubmissions), of any plan, report, or other deliverable, or any portion thereof: (a) such plan, report, or other deliverable, or portion thereof, shall be incorporated into and enforceable under this Consent Decree; and (b) the Settling Defendant shall take any action required by such plan, report, or other deliverable, or portion thereof, subject only to its right to invoke the Dispute Resolution procedures set forth in Section XIX (Dispute Resolution) with respect to the modifications or conditions made by EPA. The implementation of any non-deficient portion of a plan, report, or other deliverable submitted or resubmitted under Paragraph 35 (Initial Submissions) or 36 (Resubmissions) shall

not relieve the Settling Defendant of any liability for stipulated penalties under Section XX (Stipulated Penalties).

XII. PROJECT COORDINATORS

39. Within twenty (20) days after lodging this Consent Decree, the Settling Defendant, the State and EPA will notify each other, in writing, of the name, address, telephone number, and email address of their respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least five (5) working days before the change occurs, unless impracticable, but in no event later than the actual day the change is made. The Settling Defendant's Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Defendant's Project Coordinator shall not be an attorney for any Settling Defendant in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

40. Plaintiffs may designate other representatives, including, but not limited to, EPA and State employees, and federal and State contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager ("RPM") and an On-Scene Coordinator ("OSC") by the NCP, 40 C.F.R. Part 300. EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the NCP, to halt any Work required by this Consent Decree and to take any necessary response action when he or she determines that conditions at the Project Area

constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

XIII. PERFORMANCE GUARANTEE

41. In order to ensure the full and final completion of the Work, the Settling Defendant shall establish and maintain a performance guarantee, initially in the amount of $971,700, for the benefit of EPA (hereinafter "Estimated Cost of the Work"). The performance guarantee, must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from the "Financial Assurance" category on the Cleanup Enforcement Model Language and Sample Documents Database at http://cfpub.epa.gov/compliance/models/, and satisfactory to EPA. If the Settling Defendant intends to use multiple mechanisms, such multiple mechanisms shall be limited to surety bonds guaranteeing payment, letters of credit, trust funds, and insurance policies.

a. A surety bond unconditionally guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. One or more irrevocable letters of credit, payable to or at the direction of EPA, that is issued by one or more financial institution(s) (1) that has the authority to issue letters of credit and (2) whose letter-of-credit operations are regulated and examined by a federal or state agency;

c. A trust fund established for the benefit of EPA that is administered by a trustee (1) that has the authority to act as a trustee and (2) whose trust operations are regulated and examined by a federal or state agency;

d. A policy of insurance that (1) provides EPA with acceptable rights as a beneficiary thereof; and (2) is issued by an insurance carrier (i) that has the authority to issue insurance policies in the applicable jurisdiction(s) and (ii) whose insurance operations are regulated and examined by a federal or state agency;

e. A demonstration by the Settling Defendant that it meets the relevant financial test criteria of 40 C.F.R. § 264.143(f) and reporting requirements of this Section with respect to the Estimated Cost of the Work (plus the amount(s) of any other federal or any state environmental obligations financially assured through the use of a financial test or guarantee); or

f. A written guarantee to fund or perform the Work executed in favor of EPA by one or more of the following: (1) a direct or indirect parent company of the Settling Defendant; or (2) a company that has a "substantial business relationship" (as defined in 40 C.F.R. § 264.141(h)) with the Settling Defendant; provided, however, that any company providing such a guarantee must demonstrate to the satisfaction of EPA that it satisfies the relevant financial test criteria of 40 C.F.R. § 264.143(f) and reporting requirements of this Section with respect to the Estimated Cost of the Work (plus the amount(s) of any other federal or any state environmental obligations financially assured through the use of a financial test or guarantee) that it proposes to guarantee hereunder.

42. The Settling Defendant has selected, and EPA has found satisfactory, as an initial performance guarantee, the letter of credit pursuant to Paragraph 41.b, in the form attached hereto as Appendix D. Within thirty (30) days after the Effective Date, the Settling Defendant shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the form of performance guarantee attached as Appendix D to the EPA Regional Financial Management Officer in accordance with Section XXVI (Notices and Submissions), with a copy

to the United States and EPA and the State as specified in Section XXVI (Notices and Submissions).

43. If, at any time after the Effective Date and before issuance of the Certification of Completion of the Work pursuant to Paragraph 48, the Settling Defendant provides a performance guarantee for completion of the Work by means of a demonstration or guarantee pursuant to Paragraph 41(e) or 41(f), the Settling Defendant shall also comply with the other relevant criteria and requirements of 40 C.F.R. § 264.143(f) and this Section, including but not limited to: (a) the initial submission to EPA of required financial reports and statements from the relevant entity's chief financial officer ("CFO") and independent certified public accountant ("CPA") no later than thirty (30) days after the effective date, in the form prescribed by EPA in its financial test sample CFO letters and CPA reports available at: http://cfpub.epa.gov/compliance/models/view.cfm?model_ID=573; (b) the annual resubmission of such reports and statements within ninety (90) days after the close of each such entity's fiscal year; and (c) the prompt notification of EPA after each such entity determines that it no longer satisfies the financial test criteria and requirements set forth at 40 C.F.R. § 264.143(f)(1) and in any event within ninety (90) days after the close of any fiscal year in which such entity no longer satisfies such financial test requirements. For purposes of the performance guarantee mechanisms specified in this Section XIII, references in 40 C.F.R. Part 264, Subpart H, to "closure," "post-closure," and "plugging and abandonment" shall be deemed to include the Work; the terms "current closure cost estimate," "current post-closure cost estimate," and "current plugging and abandonment cost estimate" shall be deemed to include the Estimated Cost of the Work; the terms "owner" and "operator" shall be deemed to refer the Settling

Defendant making a demonstration under Paragraph 41(e); and the terms "facility" and "hazardous waste facility" shall be deemed to include the Project Area.

44. In the event that EPA determines at any time that a performance guarantee provided by the Settling Defendant pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, or in the event that the Settling Defendant becomes aware of information indicating that a performance guarantee provided pursuant to this Section is inadequate or otherwise no longer satisfies the requirements set forth in this Section, whether due to an increase in the estimated cost of completing the Work or for any other reason, the Settling Defendant, within thirty (30) days after receipt of notice of EPA's determination or, as the case may be, within thirty (30) days of the Settling Defendant becoming aware of such information, shall obtain and present to EPA for approval a proposal for a revised or alternative form of performance guarantee listed in Paragraph 41 that satisfies all requirements set forth in this Section; provided, however, that if the Settling Defendant cannot obtain such revised or alternative form of performance guarantee within such thirty (30)-day period, and provided further that the Settling Defendant shall have commenced to obtain such revised or alternative form of performance guarantee within such thirty (30)-day period, and thereafter diligently proceeds to obtain the same, EPA shall extend such period for such time as is reasonably necessary for the Settling Defendant in the exercise of due diligence to obtain such revised or alternative form of performance guarantee, such additional period not to exceed thirty (30) days. In seeking approval for a revised or alternative form of performance guarantee, the Settling Defendant shall follow the procedures set forth in Paragraph 46.b. The Settling Defendant's inability to post a performance guarantee for completion of the Work shall in no way excuse

performance of any other requirements of this Consent Decree, including, without limitation, the obligation of the Settling Defendant to complete the Work in strict accordance with the terms of this Consent Decree.

45. Funding for Work Takeover. The commencement of any Work Takeover pursuant to Paragraph 85 shall trigger EPA's right to receive the benefit of any performance guarantee(s) provided pursuant to Paragraphs 41.a, 41.b, 41.c, 41.d, or 41.f, and at such time EPA shall have immediate access to resources guaranteed under any such performance guarantee(s), whether in cash or in kind, as needed to continue and complete the Work assumed by EPA under the Work Takeover. Upon the commencement of any Work Takeover, if (a) for any reason EPA is unable to promptly secure the resources guaranteed under any such performance guarantee(s), whether in cash or in kind, necessary to continue and complete the Work assumed by EPA under the Work Takeover, or (b) in the event that the performance guarantee involves a demonstration of satisfaction of the financial test criteria pursuant to Paragraph 41.e or Paragraph 41.f(2), the Settling Defendant (or in the case of Paragraph 41.f(2), the guarantor) shall immediately upon written demand from EPA deposit into a special account within the EPA Hazardous Substance Superfund or such other account as EPA may specify, in immediately available funds and without setoff, counterclaim, or condition of any kind, a cash amount up to but not exceeding the estimated cost of completing the Work as of such date, as determined by EPA. In addition, if at any time EPA is notified by the issuer of a performance guarantee that such issuer intends to cancel the performance guarantee mechanism it has issued, then, unless the Settling Defendant provides a substitute performance guarantee mechanism in accordance with this Section no later than thirty (30) days prior to the impending cancellation date, EPA shall be entitled (as of and after the date that is thirty (30) days prior to the impending

cancellation) to draw fully on the funds guaranteed under the then-existing performance guarantee. All EPA Work Takeover costs not reimbursed under this Paragraph shall be reimbursed under Section XVI (Payments for Response Costs).

46. Modification of Amount and/or Form of Performance Guarantee.

a. Reduction of Amount of Performance Guarantee. If the Settling Defendant believes that the estimated cost of completing the Work has diminished below the amount set forth in Paragraph 41, the Settling Defendant may, on any anniversary of the Effective Date, or at any other time agreed to by the Parties, petition EPA in writing to request a reduction in the amount of the performance guarantee provided pursuant to this Section so that the amount of the performance guarantee is equal to the estimated cost of completing the Work. The Settling Defendant shall submit a written proposal for such reduction to EPA that shall specify, at a minimum, the estimated cost of completing the Work and the basis upon which such cost was calculated. In seeking approval for a reduction in the amount of the performance guarantee, the Settling Defendant shall follow the procedures set forth in Paragraph 46.b(ii) for requesting a revised or alternative form of performance guarantee, except as specifically provided in this Paragraph 46.a. If EPA decides to accept the Settling Defendant's proposal for a reduction in the amount of the performance guarantee, either to the amount set forth in the Settling Defendant's written proposal or to some other amount as selected by EPA, EPA will notify the petitioning Settling Defendant of such decision in writing. Upon EPA's acceptance of a reduction in the amount of the performance guarantee, the Estimated Cost of the Work shall be deemed to be the estimated cost of completing the Work set forth in EPA's written decision. After receiving EPA's written decision, the Settling Defendant may reduce the amount of the performance guarantee in accordance with and to the extent permitted by such written

acceptance and shall submit copies of all executed and/or otherwise finalized instruments or other documents required in order to make the selected performance guarantee(s) legally binding in accordance with Paragraph 46.b(ii). In the event of a dispute, the Settling Defendant may reduce the amount of the performance guarantee required hereunder only in accordance with a final administrative or judicial decision resolving such dispute pursuant to Section XIX (Dispute Resolution). No change to the form or terms of any performance guarantee provided under this Section, other than a reduction in amount, is authorized except as provided in Paragraphs 44 or 46.b.

b. Change of Form of Performance Guarantee.

i. If, after the Effective Date, the Settling Defendant desires to change the form or terms of any performance guarantee(s) provided pursuant to this Section, the Settling Defendant may, on any anniversary of the Effective Date, or at any other time agreed to by the Parties, petition EPA in writing to request a change in the form or terms of the performance guarantee provided hereunder. The submission of such proposed revised or alternative performance guarantee shall be as provided in Paragraph 46.b(ii). Any decision made by EPA on a petition submitted under this Paragraph shall be made in EPA's sole and unreviewable discretion and such decision shall not be subject to challenge by the Settling Defendant pursuant to the dispute resolution provisions of this Consent Decree or in any other forum.

ii. The Settling Defendant shall submit a written proposal for a revised or alternative performance guarantee to EPA that shall specify, at a minimum, the estimated cost of completing the Work, the basis upon which such cost was calculated, and the proposed revised performance guarantee, including all proposed instruments or other documents

required in order to make the proposed performance guarantee legally binding. The proposed revised or alternative performance guarantee must satisfy all requirements set forth or incorporated by reference in this Section. The Settling Defendant shall submit such proposed revised or alternative performance guarantee to the EPA Regional Financial Management Officer in accordance with Section XXVI (Notices and Submissions). EPA will notify the Settling Defendant in writing of its decision to accept or reject a revised or alternative performance guarantee submitted pursuant to this Paragraph. Within ten (10) days after receiving a written decision approving the proposed revised or alternative performance guarantee, the Settling Defendant shall execute and/or otherwise finalize all instruments or other documents required in order to make the selected performance guarantee(s) legally binding in a form substantially identical to the documents submitted to EPA as part of the proposal, and such performance guarantee(s) shall thereupon be fully effective. The Settling Defendant shall submit copies of all executed and/or otherwise finalized instruments or other documents required in order to make the selected performance guarantee(s) legally binding to the EPA Regional Financial Management Officer within thirty (30) days after receiving a written decision approving the proposed revised or alternative performance guarantee in accordance with Section XXVI (Notices and Submissions) and to the United States and EPA and the State as specified in Section XXVI.

c. Release of Performance Guarantee. The Settling Defendant shall not release, cancel, or discontinue any performance guarantee provided pursuant to this Section except as provided in this Paragraph. If the Settling Defendant receives written notice from EPA in accordance with Paragraph 48 that the Work has been fully and finally completed in accordance with the terms of this Consent Decree, or if EPA otherwise so notifies the Settling

Defendant in writing, the Settling Defendant may thereafter release, cancel, or discontinue the performance guarantee(s) provided pursuant to this Section. In the event of a dispute, the Settling Defendant may release, cancel, or discontinue the performance guarantee(s) required hereunder only in accordance with a final administrative or judicial decision resolving such dispute pursuant to Section XIX (Dispute Resolution).

XIV. CERTIFICATION OF COMPLETION

47. Completion of the Remedial Action.

a. Within sixty (60) days after the Settling Defendant concludes that the Remedial Action has been fully performed and the Performance Standards have been achieved, the Settling Defendant shall schedule and conduct a pre-certification inspection to be attended by the Settling Defendant, EPA, and the State. If, after the pre-certification inspection, the Settling Defendant still believes that the Remedial Action has been fully performed and the Performance Standards have been achieved, it shall submit a written report requesting certification to EPA for approval, with a copy to the State, pursuant to Section XI (EPA Approval of Plans, Reports, and Other Deliverables) within thirty (30) days after the inspection. In the report, a registered professional engineer and the Settling Defendant's Project Coordinator shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of the Settling Defendant or the Settling Defendant's Project Coordinator:

> I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry

of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity for review and comment by the State, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify the Settling Defendant in writing of the activities that must be undertaken by the Settling Defendant pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance Standards, provided, however, that EPA may only require the Settling Defendant to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy set forth in the 2012 ROD Amendment," as that term is defined in Paragraph 12.a. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Defendant to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans, Reports, and Other Deliverables). The Settling Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to its right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion of the Remedial Action and after a reasonable opportunity for

review and comment by the State, that the Remedial Action has been performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to the Settling Defendant. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXI (Covenants by Plaintiffs). Certification of Completion of the Remedial Action shall not affect the Settling Defendant's remaining obligations under this Consent Decree.

48. Completion of the Work.

a. Within sixty (60) days after the Settling Defendant concludes that all phases of the Work, other than any remaining activities required under Section VII (Remedy Review), have been fully performed, the Settling Defendant shall schedule and conduct a pre-certification inspection to be attended by the Settling Defendant, EPA, and the State. If, after the pre-certification inspection, the Settling Defendant still believes that the Work has been fully performed, within thirty (30) days of the Pre-Certification Inspection, the Settling Defendant shall submit a Pre-Certification Written Report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the statement set forth in Paragraph 47.a, signed by a responsible corporate official of the Settling Defendant or the Settling Defendant's Project Coordinator. If, after review of the written report, EPA, after reasonable opportunity for review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify the Settling Defendant in writing of the activities that must be undertaken by the Settling Defendant pursuant to this Consent Decree to complete the Work, provided, however, that EPA may only require the Settling Defendant to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the

remedy set forth in the 2012 ROD Amendment," as that term is defined in Paragraph 12.a. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree and the SOW or require the Settling Defendant to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans, Reports, and Other Deliverables). The Settling Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to its right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

49. b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion of the Work by the Settling Defendant and after a reasonable opportunity for review and comment by the State, that the Work has been performed in accordance with this Consent Decree, EPA will so notify the Settling Defendant in writing. Issuance of Certification of Completion of the Work does not affect the following continuing obligations: (1) activities under the Section VII (Remedy Review); (2) obligations under Paragraph c (Notice to Successors-in-Title and Transfers of Real Property) and Sections IX (Access and Institutional Controls), XXV (Retention of Records), and XXIV (Access to Information); and (3) reimbursement of EPA's Response Costs or State Future Response Costs under Section XVI (Payments for Response Costs).

XV. EMERGENCY RESPONSE

50. If any action or occurrence during the performance of the Work causes or threatens a release of Waste Material on, at, or from the Project Area and that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, the Settling Defendant shall, subject to Paragraph 51, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall

immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, the EPA Emergency Response Unit, Region 9 and, after notifying EPA, shall immediately notify the State. The Settling Defendant shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plan/ Contingency Plan, and any other applicable plans or documents developed pursuant to the SOW. In the event that the Settling Defendant fails to take appropriate response action as required by this Section, and EPA or, as appropriate, the State take such action instead, the Settling Defendant shall reimburse EPA and the State all costs of the response action under Section XVI (Payments for Response Costs).

51. Subject to Section XXI (Covenants by Plaintiffs), nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States, or the State, (a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Project Area, or (b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Project Area.

XVI. PAYMENTS FOR RESPONSE COSTS

52. Payments to EPA by the Settling Defendant of Response Costs. The Settling Defendant shall pay to EPA all Response Costs, as defined in Section IV (Definitions) of this Consent Decree, not inconsistent with the NCP.

a. On a periodic basis, EPA will send the Settling Defendant a bill requiring payment that includes an EPA Region 9 Cost Summary Report, which sets forth the direct and indirect costs incurred by EPA its contractors, and DOJ. The Settling Defendant shall make all

payments within thirty (30) days after the Settling Defendant's receipt of each bill requiring payment, except as otherwise provided in Paragraph 52, in accordance with Paragraphs 52.b (Payment Instructions for the Settling Defendant). Any payments collected shall be deposited by EPA in the TIAA Burr Brown Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund, provided however that EPA may deposit a Response Cost payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, EPA estimates that the TIAA Burr Brown Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by EPA at or in connection with the Site.

b. Payment Instructions for the Settling Defendant. Unless otherwise directed by EPA, all payments to EPA required in this Consent Decree shall be made by automated clearinghouse ("ACH") to:

PNC Bank

808 17th Street, NW

Washington, DC 20074

Contact: Jesse White 301-887-6548

ABA = 051036706

Transaction Code 22 - checking

Environmental Protection Agency

Account 310006 CTX Format

c. Payment References and Notices. All payments to EPA made under this Consent Decree shall reference the Site/Spill ID Number 09L8, and DOJ Case Number 90-11-3-

369. At the time of any payment required to be made under this Consent Decree, the Settling Defendant shall send notice that payment has been made to the United States, and to EPA, in accordance with Section XXVI (Notices and Submissions), and to the EPA Cincinnati Finance Office by email at cinwd_acctsreceivable.@epa.gov, or by mail at 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268. Such notice shall also reference the Site/Spill ID Number, and DOJ Case Number.

53. Payments by the Settling Defendant of State Future Response Costs.

a. Within sixty (60) calendar days after the Effective Date, Settling Defendant shall pay to the State five-thousand dollars ($5,000.00) toward the State Future Response Costs that are expected to be incurred after the Effective Date. All payments under this Section must be made payable to the Arizona Department of Environmental Quality and forwarded to:

Nareej Deshpande
Attn: Accounts Receivable
Arizona Department of Environmental Quality
1110 West Washington Street
Phoenix, Arizona 85007

The payment must include the case name and number, Site Code # 420000-05 and that payment is for the "Texas Instruments, Tucson Corporation Oversight Account." A copy of the payment must be sent to the ADEQ Project Manager. The State shall deposit payments under this Section in a Water Quality Assurance Revolving Fund ("WQARF") account referred to as the "Texas Instruments, Tucson Corporation Oversight Account." The State may thereafter draw down on this account from time to time to fund its State Future Response Costs. The Texas Instruments, Tucson Corporation Oversight Account is for the exclusive use of the State for its State Future

Response Costs under this Consent Decree. Settling Defendant is not liable for reimbursing the account for any other use of the funds.

c. Beginning on a quarterly basis after the Effective Date, the State shall provide to Settling Defendant a cost accounting summary consisting of invoices and summaries of direct and indirect costs incurred, including costs paid to its contractors in that quarter, and a summary of the State draw-downs made from the Texas Instruments, Tucson Corporation Oversight Account. The State shall also provide a report on the balance of the Texas Instruments, Tucson Corporation Oversight Account.

d. Subject to Paragraph "e" of this Section, for as long as this Consent Decree remains in effect, the State may notify Settling Defendant if the balance of the Texas Instruments, Tucson Corporation Oversight Account is five-hundred dollars ($500.00) or less. Within thirty (30) calendar days after receipt of the above notice, Settling Defendant shall deposit an amount sufficient to bring the balance of that account up to five-thousand dollars ($5,000.00).

e. The State reserves the right to incur State Future Response Costs and to bill Settling Defendant for reimbursement of the State Future Response Costs incurred if at any time the balance of the funds available in the Texas Instruments, Tucson Corporation Oversight Account is insufficient to cover the State Future Response Costs. Any State billing under this Paragraph must be made in accordance with the procedures established in this Section. Settling Defendant shall pay as provided in Paragraph "a" of this Section. The State may deposit the Settling Defendant's payments to the WQARF Fund only to the extent that the State has incurred and paid State Future Response Costs from the WQARF Fund; otherwise, the State shall deposit

the Settling Defendant's payments to the Texas Instruments, Tucson Corporation Oversight Account.

f. If, at any time, the Texas Instruments, Tucson Corporation Oversight Account funds have been used for any purpose other than payment of State Future Response Costs, the State shall give Settling Defendant a credit for the amount of those funds. Settling Defendant's obligations under paragraphs "d" and "e" of this Section are then suspended until the State has billed against the total amount of the credit.

54. The Settling Defendant may contest any Response Costs and State Future Response Costs billed under Paragraphs 52 (Payments by the Settling Defendant of Response Costs) and 53 (Payments by the Settling Defendant of State Future Response Costs) if it determines that EPA or the State has made a mathematical error or included a cost item that is not within the definition of Response Costs or State Future Response Costs, or if it believes EPA or the State incurred excess costs as a direct result of an EPA or State action that was inconsistent with a specific provision or provisions of the NCP. Such objection shall be made in writing within thirty (30) days after receipt of the bill and must be sent to the United States (if the United States' accounting is being disputed) or the State (if the State's accounting is being disputed) pursuant to Section XXVI (Notices and Submissions). Any such objection shall specifically identify the contested Response Costs or State Future Response Costs and the basis for objection. In the event of an objection, the Settling Defendant shall pay all uncontested Response Costs or State Future Response Costs to the United States or the State within thirty (30) days after the Settling Defendant's receipt of the bill requiring payment. Simultaneously, the Settling Defendant shall establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation ("FDIC"),

and remit to that escrow account funds equivalent to the amount of the contested Response Costs or State Future Response Costs. The Settling Defendant shall send to the United States, as provided in Section XXVI (Notices and Submissions), and the State a copy of the transmittal letter and check paying the uncontested Response Costs or State Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Settling Defendant shall initiate the Dispute Resolution procedures in Section XIX (Dispute Resolution). If the United States or the State prevails in the dispute, the Settling Defendant shall pay the sums due (with accrued interest) to the United States or the State within five (5) days after the resolution of the dispute. If the Settling Defendant prevails concerning any aspect of the contested costs, the Settling Defendant shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to the United States or the State within five (5) days after the resolution of the dispute. The Settling Defendant shall be disbursed any balance of the escrow account. All payments to the United States under this Paragraph shall be made in accordance with Paragraph 52.b. (Payment Instructions for the Settling Defendant). All payments to the State under this Paragraph shall be made in accordance with Paragraph 53 (Payments by the Settling Defendant of State Future Response Costs). The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Defendant's obligation to reimburse the United States and the State for their Response Costs and State Future Response Costs.

55. Interest. In the event that any payment for Response Costs or State Future Response Costs required under this Section is not made by the date required, the Settling Defendant shall pay Interest on the unpaid balance. The Interest on Response Costs or State Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of the Settling Defendant's payment. Payments of Interest made under this Paragraph shall be in addition to other remedies and sanctions available to Plaintiffs by virtue of the Settling Defendant's failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to Paragraph 71.

XVII. INDEMNIFICATION AND INSURANCE

56. The Settling Defendant's Indemnification of the United States and the State.

a. The United States and the State do not assume any liability by entering into this Consent Decree or by virtue of any designation of the Settling Defendant as EPA's authorized representative under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). The Settling Defendant shall indemnify, save and hold harmless the United States, the State, and their officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of the Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of the Settling Defendant as EPA's authorized representative under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e). Further, the Settling Defendant agrees to pay the United States and the State all costs they incur including, but not limited to, attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States

or the State based on negligent or other wrongful acts or omissions of the Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree. Neither the United States nor the State shall be held out as a party to any contract entered into by or on behalf of the Settling Defendant in carrying out activities pursuant to this Consent Decree. Neither the Settling Defendant nor any such contractor shall be considered an agent of the United States or the State.

b. The United States and the State shall give the Settling Defendant notice of any claim for which the United States or the State plans to seek indemnification pursuant to this Paragraph 56, and shall consult with the Settling Defendant prior to settling such claim.

57. The Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States and the State for damages or reimbursement or for set-off of any payments made or to be made to the United States or the State, arising from or on account of any contract, agreement, or arrangement between the Settling Defendant and any person for performance of Work on or relating to the Project Area, including, but not limited to, claims on account of construction delays. In addition, the Settling Defendant shall indemnify and hold harmless the United States and the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between the Settling Defendant and any person for performance of Work on or relating to the Project Area, including, but not limited to, claims on account of construction delays.

58. No later than fifteen (15) days before commencing any Work in the Project Area, the Settling Defendant shall secure, and shall maintain until the first anniversary after issuance of EPA's Certification of Completion of the Remedial Action pursuant to Paragraph 47 of Section

XIV (Certification of Completion), commercial general liability insurance with limits of one million dollars ($1,000,000.00), for any one occurrence, and automobile liability insurance with limits of one million dollars ($1,000,000.00), combined single limit, naming the United States and the State as additional insureds with respect to all liability arising out of the activities performed by or on behalf of the Settling Defendant pursuant to this Consent Decree. In addition, for the duration of this Consent Decree, the Settling Defendant shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of the Settling Defendant in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, the Settling Defendant shall provide to EPA and the State certificates of such insurance and a copy of each insurance policy. The Settling Defendant shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. If the Settling Defendant demonstrates by evidence satisfactory to EPA and the State that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, the Settling Defendant need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor.

XVIII. FORCE MAJEURE

59. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendant, of any entity controlled by the Settling Defendant, or of the Settling Defendant's contractors that delays or prevents the performance of any obligation under this Consent Decree despite the Settling Defendant's best efforts to fulfill the obligation. The requirement that the Settling Defendant exercise "best

efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work or a failure to achieve the Performance Standards.

60. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree for which the Settling Defendant intends or may intend to assert a claim of force majeure, the Settling Defendant shall notify EPA's Project Coordinator orally or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Superfund Division, EPA Region 9, within seventy-two (72) hours of when the Settling Defendant first knew that the event might cause a delay. Within ten (10) days thereafter, the Settling Defendant shall provide in writing to EPA and the State an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendant's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of the Settling Defendant, such event may cause or contribute to an endangerment to public health or welfare, or the environment. The Settling Defendant shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. The Settling Defendant shall be deemed to know of any circumstance of which the Settling Defendant, any entity controlled by the Settling Defendant, or the Settling Defendant's contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude the Settling Defendant

from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 59 and whether the Settling Defendant has exercised its best efforts under Paragraph 59, EPA may, in its unreviewable discretion, excuse in writing the Settling Defendant's failure to submit timely or complete notices under this Paragraph.

61. If EPA, after a reasonable opportunity for review and comment by the State, agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Consent Decree that are affected by the force majeure will be extended by EPA, after a reasonable opportunity for review and comment by the State, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If EPA, after a reasonable opportunity for review and comment by the State, does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify the Settling Defendant in writing of its decision. If EPA, after a reasonable opportunity for review and comment by the State, agrees that the delay is attributable to a force majeure, EPA will notify the Settling Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

62. If the Settling Defendant elects to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution), it shall do so no later than fifteen (15) days after receipt of EPA's notice. In any such proceeding, the Settling Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate

the effects of the delay, and that the Settling Defendant complied with the requirements of Paragraphs 58 and 59. If the Settling Defendant carries this burden, the delay at issue shall be deemed not to be a violation by the Settling Defendant of the affected obligation of this Consent Decree identified to EPA and the Court.

63. The failure by EPA to timely complete any obligation under the Consent Decree, or any plan, report, or other deliverable approved by EPA under the Consent Decree, is not a violation of the Consent Decree, provided, however, that if such failure prevents the Settling Defendant from meeting one or more deadlines established by or approved under the Consent Decree, Settling Defendant may seek relief under this Section.

XIX. DISPUTE RESOLUTION

64. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes regarding this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Defendant that have not been disputed in accordance with this Section.

65. Any dispute regarding this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed thirty (30) days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

66. Dispute Resolution between EPA and the Settling Defendant.

a. Statements of Position.

i. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within thirty (30) days after the conclusion of the informal negotiation period, the Settling Defendant invokes the formal dispute resolution procedures of this Section by serving on the United States and the State a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the Settling Defendant. The Statement of Position shall specify the Settling Defendant's position as to whether formal dispute resolution should proceed under Paragraph 66.b (Record Review) or 67.

ii. Within thirty (30) days after receipt of the Settling Defendant's Statement of Position, EPA will serve on the Settling Defendant its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 66.b (Record Review) or Paragraph 67. Within twenty (20) days after receipt of EPA's Statement of Position, the Settling Defendant may submit a Reply.

iii. If there is disagreement between EPA and the Settling Defendant as to whether dispute resolution should proceed under Paragraph 66.b (Record Review) or 67, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Settling Defendant ultimately appeals to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 66.b (Record Review) and 67.

b. Record Review. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation, the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree, and the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by the Settling Defendant regarding the validity of the 2012 ROD Amendment's provisions.

i. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

ii. The Director of the Superfund Division, EPA Region 9, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 66.b(i). This decision shall be binding upon the Settling Defendant, subject only to the right to seek judicial review pursuant to Paragraphs 66.b(iii) and 66.b(iv).

iii. Any administrative decision made by EPA pursuant to Paragraph 66.b(ii) shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendant with the Court and served on all Parties within thirty (30) days after receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the

schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to the Settling Defendant's motion.

iv. In proceedings on any dispute governed by this Paragraph, the Settling Defendant shall have the burden of demonstrating that the decision of the Superfund Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 66.b(i).

67. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. The Director of the Superfund Division, EPA Region 9, will issue a final decision resolving the dispute based on the statements of position and reply, if any, served under Paragraph 66. The Superfund Division Director's decision shall be binding on the Settling Defendant unless, within thirty (30) days after receipt of the decision, the Settling Defendant files with the Court and serves on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to the Settling Defendant's motion.

b. Notwithstanding Paragraph M (CERCLA Section 113(j) Record Review of 2012 ROD Amendment and Work) of Section I (Background), judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

68. Dispute Resolution between the State and Settling Defendant. If the Settling Defendant objects to any bill from the State pursuant to this Consent Decree, the State and the Settling Defendant shall attempt to resolve, expeditiously and informally, any such objection.

a. The Settling Defendant shall notify the State in writing of its objection(s) to any bills from the State within twenty (20) days of receipt of the bill, unless the objection(s) has been informally resolved. Such notice shall set forth the specific points of the objection(s), the position the Settling Defendant maintains should be adopted as consistent with the requirements of this Consent Decree, the factual and legal basis for this position, and all matters Settling Defendant considers necessary for the determination by the State. The State and the Settling Defendant shall have thirty (30) working days from the receipt of the written objection(s) to attempt to resolve the dispute. If agreement is reached, the resolution shall be reduced to writing and signed by the Settling Defendant and the State.

b. If the Settling Defendant and the State are unable to reach agreement within this thirty (30) working day period, the matter shall be referred to the Director of the ADEQ Waste Programs Division (Division Director). The State shall provide notice in writing of its position, including the position the State maintains should be adopted as consistent with the requirements of this Consent Decree, the factual and legal basis for this position, and all matters the State considers necessary for the determination by the Division Director. The Settling Defendant may reply to the State's notice of its position within ten (10) days of receipt. The Division Director shall then decide the matter on the basis of those written material and any meeting held between the State and the Settling Defendant.

69. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of the Settling Defendant under this

Consent Decree, except as provided in this Paragraph, as agreed by EPA, or determined by the Court. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 74. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

XX. STIPULATED PENALTIES

70. The Settling Defendant shall be liable for stipulated penalties in the amounts set forth in Paragraphs 71 and 72 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVIII (Force Majeure). "Compliance" by the Settling Defendant shall include completion of all payments and activities required under this Consent Decree, or any plan, report, or other deliverable approved under this Consent Decree, in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans, reports, or other deliverables approved under this Consent Decree and within the specified time schedules established by and approved under this Consent Decree. Settling Defendant shall be liable for stipulated penalties to the State for failure to timely pay the State's Future Response Costs.

71. Stipulated Penalty Amounts - Work (Excluding Payments, Plans, Reports, and Other Deliverables).

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 71.b:

Penalty Per Violation Per Day	Period of Noncompliance
$3,000	1st through 14th day
$6,000	15th through 30th day
$15,000	31st day and beyond

b. Compliance Milestones.

i. Failure to timely and adequately select a contractor as required by Paragraph 10;

ii. Failure to perform the Work timely and adequately as set forth in any and all EPA approved plans;

iii. Failure to perform further response actions as required by Paragraph 18;

iv. Failure to provide access as required by Paragraph 24;

v. Failure to secure an access agreement pursuant to Paragraph 25;

vi. Failure to establish or maintain the performance guarantee required by Paragraph 41;

vii. Failure to perform emergency response as required by Paragraph 50; and

viii. Failure to indemnify, save and hold harmless the United States and the State from certain claims as required by Paragraph 57.

72. Stipulated Penalty Amounts – Payments, Plans, Reports, and other Deliverables. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate reports or other plans and deliverables, including failure to pay Response Costs or State Future Response Costs, pursuant to the Consent Decree:

Penalty Per Violation Per Day	Period of Noncompliance
$1,500	1st through 14th day
$3,000	15th through 30th day
$8,000	31st day and beyond

73. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 86 (Work Takeover), the Settling Defendant shall be liable for a stipulated penalty in the amount of $250,000. Stipulated penalties under this Paragraph are in addition to the remedies available under Paragraphs 45 (Funding for Work Takeover) and 86 (Work Takeover).

74. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Section XI (EPA Approval of Plans, Reports, and Other Deliverables), during the period, if any, beginning on the thirty-first (31st) day after EPA's receipt of such submission until the date that EPA notifies the Settling Defendant of any deficiency; (b) with respect to a decision by the Director of the Superfund Division, EPA Region 9, under Paragraph 66.b or 67.a of Section XIX (Dispute Resolution), during the period, if any, beginning on the twenty-first (21st) day after the date that the Settling Defendant's reply to EPA's Statement of Position is received until the date that the Director

issues a final decision regarding such dispute; or (c) with respect to judicial review by this Court of any dispute under Section XIX (Dispute Resolution), during the period, if any, beginning on the thirty-first (31st) day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

75. Following a determination that the Settling Defendant has failed to comply with a requirement of this Consent Decree, EPA or the State may give the Settling Defendant written notification of the same and describe the noncompliance. EPA and the State may send the Settling Defendant a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA or the State has notified the Settling Defendant of a violation.

76. All penalties accruing under this Section shall be due and payable to the United States or the State within thirty (30) days after the Settling Defendant's receipt from EPA or the State of a demand for payment of the penalties, unless the Settling Defendant invokes the Dispute Resolution procedures under Section XIX (Dispute Resolution) within the thirty (30)-day period. All payments to the United States or the State under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph 52 (Payments by the Settling Defendant of Response Costs) or 53 (Payments by the Settling Defendant of State Future Response Costs). Penalties shall continue to accrue as provided in Paragraph 74 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement of the Parties or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owed shall be paid to

EPA and the State within fifteen (15) days after the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, the Settling Defendant shall pay all accrued penalties determined by the Court to be owed to EPA and the State within sixty (60) days after receipt of the Court's decision or order, except as provided in Paragraph 76.c;

c. If the District Court's decision is appealed by any Party, the Settling Defendant shall pay all accrued penalties determined by the District Court to be owed to the United States and the State into an interest-bearing escrow account, established at a duly chartered bank or trust company that is insured by the FDIC, within sixty (60) days after receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every sixty (60) days. Within fifteen (15) days after receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA and the State or to the Settling Defendant to the extent that it prevails.

77. If the Settling Defendant fails to pay stipulated penalties when due, the Settling Defendant shall pay Interest on the unpaid stipulated penalties as follows: (a) if the Settling Defendant has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 76 until the date of payment; and (b) if the Settling Defendant fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 75 until the date of payment. If the Settling Defendant fails to pay stipulated penalties and Interest when due, the United States or the State may institute proceedings to collect the penalties and Interest.

78. The payment of penalties and Interest, if any, shall not alter in any way the Settling Defendant's obligation to complete the performance of the Work required under this Consent Decree.

79. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States or the State to seek any other remedies or sanctions available by virtue of the Settling Defendant's violation of this Consent Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA, 42 U.S.C. § 9622(l), provided, however, that the United States shall not seek civil penalties pursuant to Section 122(l) of CERCLA for any violation for which a stipulated penalty is provided in this Consent Decree, except in the case of a willful violation of this Consent Decree.

80. Notwithstanding any other provision of this Section, the United States and the State may, in their unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

XXI. COVENANTS BY PLAINTIFFS

81. Covenants for the Settling Defendant by the United States. In consideration of the actions that will be performed and the payments that will be made by the Settling Defendant under this Consent Decree, and except as specifically provided in Paragraphs 82 and 83 (United States' Pre- and Post-Certification Reservations), and 85 (General Reservations of Rights), the United States covenants not to sue or to take administrative action against the Settling Defendant pursuant to Sections 106 and 107(a) of CERCLA relating to performance of the Work and payment of Response Costs. Except with respect to future liability, these covenants shall take effect upon the Effective Date. With respect to future liability, these covenants shall take effect

upon Certification of Completion of Remedial Action by EPA pursuant to Paragraph 47 of Section XIV (Certification of Completion). These covenants are conditioned upon the satisfactory performance by the Settling Defendant of its obligations under this Consent Decree. These covenants extend only to the Settling Defendant and do not extend to any other person.

82. United States' Pre-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, and/or to issue an administrative order, seeking to compel the Settling Defendant to perform further response actions relating to the Project Area and/or to pay the United States for additional costs of response if, (a) prior to Certification of Completion of the Remedial Action, (1) conditions at the Project Area, previously unknown to EPA, are discovered, or (2) information, previously unknown to EPA, is received, in whole or in part, and (b) EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

83. United States' Post-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, and/or to issue an administrative order, seeking to compel the Settling Defendant to perform further response actions relating to the Project Area and/or to pay the United States for additional costs of response if, (a) subsequent to Certification of Completion of the Remedial Action, (1) conditions at the Project Area, previously unknown to EPA, are discovered, or (2) information, previously unknown to EPA, is received, in whole or in part, and (b) EPA determines that these previously

unknown conditions or this information together with other relevant information indicates that the Remedial Action is not protective of human health or the environment.

84. For purposes of Paragraph 82 (United States' Pre-Certification Reservations), the information and the conditions known to EPA will include only that information and those conditions known to EPA as of the date the 2012 ROD Amendment was signed and set forth in the 2012 ROD Amendment and the administrative record supporting the 2012 ROD Amendment. For purposes of Paragraph 83 (United States' Post-Certification Reservations), the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action and set forth in the 2012 ROD Amendment, the administrative record supporting the 2012 ROD Amendment, the post-2012 ROD Amendment administrative record, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

85. General Reservations of Rights. The United States reserves, and this Consent Decree is without prejudice to, all rights against the Settling Defendant with respect to all matters not expressly included within the United States' covenants. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against the Settling Defendant with respect to:

a. liability for failure by the Settling Defendant to meet a requirement of this Consent Decree;

b. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Project Area;

c. liability based on any future ownership of the Project Area by the Settling Defendant when such ownership commences after signature of this Consent Decree by the Settling Defendant.

d. liability based on the Settling Defendant's transportation, treatment, storage, or disposal, or arrangement for transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the 2012 ROD Amendment, the Work, or otherwise ordered by EPA, after signature of this Consent Decree by the Settling Defendant;

e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

f. criminal liability;

g. liability for violations of federal or state law that occur during or after implementation of the Work;

h. liability for additional response actions that EPA determines are necessary to achieve and maintain Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the 2012 ROD Amendment, but that cannot be required pursuant to Paragraph 12 (Modification of SOW or Related Work Plans); and

i. liability for costs that the United States will incur regarding the Project Area that are not within the definition of Response Costs.

86. Work Takeover.

a. In the event EPA determines that the Settling Defendant has (1) ceased implementation of any portion of the Work, (2) is seriously or repeatedly deficient or late in its

performance of the Work, or (3) is implementing the Work in a manner that may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to the Settling Defendant. Any Work Takeover Notice issued by EPA will specify the grounds upon which such Notice was issued and will provide Settling Defendant a period of twenty (20) days within which to remedy the circumstances giving rise to EPA's issuance of such Notice.

b. If, after expiration of the twenty (20)-day notice period specified in Paragraph 86.a, the Settling Defendant has not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary ("Work Takeover"). EPA will notify the Settling Defendant in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph. Funding of Work Takeover costs is addressed under Paragraph 45.

c. The Settling Defendant may invoke the procedures set forth in Paragraph 66.b (Record Review), to dispute EPA's implementation of a Work Takeover under Paragraph 86.b. However, notwithstanding the Settling Defendant's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 86.b. until the earlier of (1) the date that the Settling Defendant remedies, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a final decision is rendered in accordance with Paragraph 66.b (Record Review) requiring EPA to terminate such Work Takeover. Notwithstanding any other provision of this Consent Decree, the United States

and the State retain all authority and reserve all rights to take any and all response actions authorized by law.

87. Covenant Not To Sue by the State. In consideration of the actions that will be performed and the payments that will be made by Settling Defendant under the terms of this Consent Decree and except as otherwise specifically provided in this Consent Decree or by A.R.S. § 49-292(B), the State, including ADEQ, covenants not to sue or to take administrative action against Settling Defendant pursuant to Section 107(a) of CERCLA, 42 U.S.C. §§ 9607(a) or A.R.S. § 49-285 for performance of the Work and for recovery of State Future Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondent of all obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendant and does not extend to any other person.

88. The covenant not to sue does not pertain to any matters other than those expressly identified therein. The State reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendant with respect to all other matters, including, but not limited to:

a. claims based on conditions at the Site, previously unknown to the State, are discovered;

b. claims based on information, previously unknown to the State, is received, in whole or in part, and ADEQ determines that these previously unknown conditions or information together with any other relevant information indicates that the Work is not protective of public health, welfare or the environment;

c. claims based on a failure by the Settling Defendant to meet a requirement of this Consent Decree;

d. criminal liability;

e. liability under CERCLA, or any other federal or state law arising from the acts or omissions of Settling Defendant that are taken after the Effective Date.

XXII. COVENANTS BY THE SETTLING DEFENDANT

89. Covenants by the Settling Defendant. Subject to the reservations in Paragraph 91, the Settling Defendant covenants not to sue and agrees not to assert any claims or causes of action against the United States or the State with respect to the Project Area, and this Consent Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through CERCLA Sections 106(b)(2), 107, 111, 112 or 113, or any other provision of law;

b. any claims under CERCLA Sections 107 or 113, RCRA Section 7002(a), 42 U.S.C. § 6972(a), or state law regarding the Project Area and this Consent Decree; or

c. any claims arising out of response actions at or in connection with the Project Area including any claim under the United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C. §1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law.

90. Except as provided in Paragraph 102 (Res Judicata and Other Defenses), the covenants in this Section shall not apply if the United States or the State brings a cause of action or issues an order pursuant to any of the reservations in Section XXI (Covenants by Plaintiffs),

other than in Paragraphs 88.c (claims based on a failure by the Settling Defendant to meet a requirement of this Consent Decree), 88.d (criminal liability), and 88.e (violations of federal/state law during or after implementation of the Work), but only to the extent that the Settling Defendant's claims arise from the same response action, response costs, or damages that the United States or the State is seeking pursuant to the applicable reservation.

91. The Settling Defendant reserves, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of the Settling Defendant's plans, reports, other deliverables or activities. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION

92. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Each of the Parties expressly reserves any and all rights (including, but not limited to, rights pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each Party

may have with respect to any matter, transaction, or occurrence relating in any way to the Project Area against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States, or the State, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

93. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially approved settlement pursuant to which the Settling Defendant has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are the Work, Response Costs, and State Future Response Costs, provided, however, that if the United States or the State exercises rights under the reservations in Section XXI (Covenants by Plaintiffs), other than in Paragraphs 88.c (claims based on a failure by the Settling Defendant to meet a requirement of this Consent Decree), 88.d (criminal liability), or 88.e (violations of federal/state law during or after implementation of the Work), the "matters addressed" in this Consent Decree will no longer include those response costs or response actions that are within the scope of the exercised reservation.

94. The Parties agree that as of the Effective Date of this Consent Decree, the obligations of the Parties under the 1990 Consent Decree shall terminate.

95. The Parties further agree, and by entering this Consent Decree this Court finds, that the complaint filed by the United States in this action is a civil action within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and that this Consent Decree constitutes a judicially approved settlement pursuant to which the Settling Defendant has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

96. The Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify the United States and the State in writing no later than sixty (60) days prior to the initiation of such suit or claim.

97. The Settling Defendant shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify in writing the United States and the State within ten (10) days after service of the complaint on such Settling Defendant. In addition, each Settling Defendant shall notify the United States and the State within ten (10) days after service or receipt of any Motion for Summary Judgment and within ten (10) days after receipt of any order from a court setting a case for trial.

98. Res Judicata and Other Defenses. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other appropriate relief relating to the Project Area, the Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this

Paragraph affects the enforceability of the covenants not to sue set forth in Section XXI (Covenants by Plaintiffs).

XXIV. ACCESS TO INFORMATION

99. The Settling Defendant shall provide to EPA and the State, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within its possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. The Settling Defendant shall also make available to EPA and the State, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

100. Business Confidential and Privileged Documents.

a. The Settling Defendant may assert business confidentiality claims covering part or all of the Records submitted to Plaintiffs under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). The Settling Defendant shall segregate and clearly identify all Records or parts thereof submitted under this Consent Decree for which the Settling Defendant asserts business confidentiality claims. Records determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA and the State, or if EPA has notified the Settling Defendant that the Records are not confidential under the standards of Section 104(e)(7)

of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to the Settling Defendant.

b. The Settling Defendant may assert that all or part of a Record is privileged or protected as provided by federal law. If the Settling Defendant asserts such a privilege in lieu of providing Records, it shall provide Plaintiffs with the following: (1) the title of the Record; (2) the date of the Record; (3) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; (4) the name and title of each addressee and recipient; (5) a description of the contents of the Record; and (6) the privilege asserted by the Settling Defendant. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to the United States in redacted form to mask the privileged portion only. The Settling Defendant shall retain all Records that it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such dispute has been resolved in the Settling Defendant's favor.

101. No claim of privilege or protection shall be made with respect to: (a) any data, regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological or engineering data; or (b) the portion of any other the Settling Defendant is required to create or generate pursuant to this Consent Decree.

XXV. RETENTION OF RECORDS

102. Until ten (10) years after the Settling Defendant's receipt of EPA's notification pursuant to Paragraph 48 (Completion of the Work), the Settling Defendant shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that the Settling Defendant

who is potentially liable as an owner or operator of the Site must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. The Settling Defendant must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that the Settling Defendant (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

103. At the conclusion of this record retention period, the Settling Defendant shall notify the United States and the State at least ninety (90) days prior to the destruction of any such Records, and, upon request by the United States or the State, the Settling Defendant shall deliver any such Records to EPA or the State. The Settling Defendant may assert that certain Records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendant asserts such a privilege, it shall provide Plaintiffs with the following: (a) the title of the Record; (b) the date of the Record; (c) the name, title, affiliation (e.g., company or firm), and address of the author of the Record; (d) the name and title of each addressee and recipient; (e) a description of the subject of the Record; and (f) the privilege asserted by the Settling Defendant. If a claim of privilege applies only to a portion of a Record, the Record shall be provided to the United States in redacted form to mask the privileged portion only. The Settling Defendant shall retain all Records that it claims to be privileged until the United States has had a reasonable opportunity to dispute the privilege claim and any such

dispute has been resolved in the Settling Defendant's favor. However, no Records created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged or confidential.

104. The Settling Defendant certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since the earlier of notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XXVI. NOTICES AND SUBMISSIONS

105. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Notices required to be sent to EPA, and not to the United States, under the terms of this Consent Decree should not be sent to the U.S. Department of Justice. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of the Consent Decree regarding such Party.

As to the United States: EES Case Management Unit
Environment and Natural Resources Division

U.S. Department of Justice

P.O. Box 7611

Washington, D.C. 20044-7611

eescdcopy.enrd@usdoj.gov

Re: DJ # 90-11-3-369

As to EPA:

Mary Aycock, Remedial Project Manager

United States Environmental Protection Agency

Region 9

75 Hawthorne St. (SFD 6-2)

San Francisco, CA 94105

aycock.mary@epa.gov

As to the Regional Financial Management Officer:

David Wood

United States Environmental Protection Agency

Region 9

75 Hawthorne St.

San Francisco, CA 94105

wood.david@epa.gov

As to the State:

William J. Ellet

Superfund Program Unit Manager

Arizona Department of Environmental Quality

Southern Regional Office

400 West Congress Street, Ste. 433

Tucson, Arizona 85701

As to the Settling Defendant: Joe Bauer, Project Coordinator

Texas Instruments Tucson Corporation

13350 TI Boulevard, MS 329

Dallas, Texas 75243

XXVII. RETENTION OF JURISDICTION

106. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Settling Defendant for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIX (Dispute Resolution).

XXVIII. APPENDICES

107. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is the 2012 ROD Amendment.

"Appendix B" is the map of the Texas Instruments Project Area/ TIAA Site-Tucson, Arizona.

"Appendix C" is the SOW.

"Appendix D" is the performance guarantee.

XXIX. COMMUNITY INVOLVEMENT

108. If requested by EPA or the State, the Settling Defendant shall participate in community involvement activities pursuant to the Community Involvement Plan to be developed by EPA. EPA will determine the appropriate role for the Settling Defendant under the Community Involvement Plan. The Settling Defendant shall also cooperate with EPA and the State in providing information regarding the Work to the public (e.g., participate in activities associated with the Unified Community Advisory Board and their associated meetings). As requested by EPA or the State, the Settling Defendant shall participate in the preparation of such information for dissemination to the public and in public meetings that may be held or sponsored by EPA or the State to explain activities at or relating to the Site. Costs incurred by the United States under this Section, including the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e), shall be considered Future Response Costs that the Settling Defendant shall pay pursuant to Section XVI (Payments for Response Costs).

XXX. MODIFICATION

109. Except as provided in Paragraph 12 (Modification of SOW or Related Work Plans), material modifications to this Consent Decree, including the SOW, shall be in writing, signed by the United States and the Settling Defendant, and shall be effective upon approval by the Court. Except as provided in Paragraph 12, non-material modifications to this Consent Decree, including the SOW, shall be in writing and shall be effective when signed by duly authorized representatives of the United States and the Settling Defendant. A modification to the SOW shall be considered material if it implements a ROD amendment that fundamentally alters the basic features of the selected remedy within the meaning of 40 C.F.R. § 300.435(c)(2)(ii).

All modifications to the Consent Decree, other than the SOW, also shall be signed by the State, or a duly authorized representative of the State, as appropriate. Before providing its approval to any modification to the SOW, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification.

110. Nothing in this Consent Decree shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this Consent Decree.

XXXI. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

111. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations that indicate that the Consent Decree is inappropriate, improper, or inadequate. The Settling Defendant consents to the entry of this Consent Decree without further notice.

112. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXXII. SIGNATORIES/SERVICE

113. Each undersigned representative of the Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice and the Director of the Waste Programs Division of the Arizona Department of Environmental Quality certifies that he or she is fully authorized to enter into the

terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

114. The Settling Defendant agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Settling Defendant in writing that it no longer supports entry of the Consent Decree.

115. The Settling Defendant shall identify, on the attached signature page, the name, address, and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. The Settling Defendant agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. The Settling Defendant need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XXXIII. FINAL JUDGMENT

116. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties regarding the settlement embodied in the Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

117. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States, the State, and the Settling Defendant. The Court enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

DATED this day of _____, 20__.

_____

United States District Judge

Signature Page for Consent Decree regarding the Tucson International Airport Area Superfund Site

FOR THE UNITED STATES OF AMERICA:

6/15/15
Date

PATRICIA L. HURST
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

Signature Page for Consent Decree regarding the Tucson International Airport Area Superfund Site

FOR THE ENVIRONMENTAL PROTECTION AGENCY

8 June 2015

Date

Enrique Manzanilla
Director, Superfund Division, Region 9
U.S. Environmental Protection Agency
75 Hawthorne St.
San Francisco, CA 94105

R. Reynolds

Rebekah Reynolds
Assistant Regional Counsel, Region 9
U.S. Environmental Protection Agency
75 Hawthorne St.
San Francisco, CA 94105

Signature Page for Consent Decree regarding the Tucson International Airport Area Superfund Site

FOR THE STATE OF ARIZONA:

6/8/15
Date

Laura Malone

LAURA MALONE
Division Director
Waste Programs Division
Arizona Department of Environmental Quality
110 West Washington Street
Phoenix, AZ 85007

Signature Page for Consent Decree regarding the Tucson International Airport Area Superfund Site

FOR TEXAS INSTRUMENTS TUCSON CORPORATION

May 14, 2015
Date

Bart T. Thomas

Bart T. Thomas
Secretary
Texas Instruments Tucson Corporation

Agent Authorized to Accept Service on Behalf of Above-signed Party:

CT Corporation
3800 North Central Ave., Suite 460
Phoenix, AZ 85012
(602) 248-1145